IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CENTRAL EXCISE & CUSTOMS GOLD CONTROL AP No 4 of 1987

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FAG PRECISION BEARINGS LTD.

Versus

COLLECTOR OF CENTRAL EXCISE

Appearance:

1. CENTRAL EXCISE & CUSTOMS GOLD CONTROL AP No. 4 of 1987
MR KS NANAVATI for Petitioner No. 1
MR DN PATEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA
Date of decision: 12/02/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this application filed under Section 35-G(3) of the Central Excise Act, 1944, the applicant-assessee has sought a direction of this Court to the Customs,

Excise & Gold (Control) Appellate Tribunal (hereinafter referred to as "the Tribunal") to submit a statement of case and to refer the following questions arising out of the order dated 10.12.1986 passed by the Tribunal at Bombay :-

(a) Whether excise duty not required to be paid by the manufacturer, but paid erroneously can be claimed under Rule 11 or under the general law of limitation ?

(b) Whether refund accepted under protest can be claimed at a later date under Rule 11 of the Central Excise Rules, 1944 ?

(c) Whether the second refund claim dated 24.4.1980 filed by the applicant was an amendment of the original refund claim filed in January, 1979 and, therefore, it was not barred by the period of limitation ?

(d) Whether the arithmetic calculation mistake made by the manufacturer in their refund claim can be rectified at a later date ?

2. We have heard Mr Trivedi, learned counsel for the applicant at length.

3. The facts leading to this application are as under :-

3.1 The dispute pertains to the excise duty paid by the applicant in the month of November, 1978. The amount involved is Rs.51,777-02 ps. For the same period the applicant had earlier filed refund application on 9.1.1979 claiming refund of Rs.80,761-88 ps. under Rule 11 of the Central Excise Rule, 1944. The refund was granted by cheque No.461796 dated 27.3.1979. Thereafter on 21.7.1980, the applicant submitted additional claim of Rs.51,777-02 ps. for the same period contending that the excess excise duty paid by the applicant in the month of November, 1978 was to the tune of Rs.1,33,538-80 ps., but on account of an arithmetic mistake, the initial refund claim was made for only Rs.80,761-88 ps. and, therefore, the supplementary claim of Rs.51,777-02 ps. may be granted. The Assistant Collector, Central Excise, Division II, Baroda rejected the said application by his order dated 24.9.1980 (Annexure "D") on the ground that the claim was time barred because it was made beyond the

period of six months from the date of payment stipulated in Rule 11. The applicant's appeal was dismissed by the Collector of Central Excise (Appeals), Bombay on the same ground.

3.2 In further appeal before the CEGAT, the applicant contended that since the original claim was already made on 9.1.1973 within the period of limitation, any supplementary claim for the same period would not be hit by the bar of limitation. It was further contended that such refund claims should be treated as being covered by the general law of limitation and since the supplementary claim was preferred within three years from the date on which the error came to its notice, the supplementary refund claim was within the period of limitation. The Tribunal rejected both these contentions.

3.3 As regards the general law of limitation, the Tribunal followed the decision of the Supreme Court in the case of Miles India Ltd. vs. Collector of Customs, 1983 HCR 242-D(CEGAT) wherein the Supreme Court had held that for the purpose of claiming refund, the time limit prescribed under the Central Excise Act would prevail and not the general law of limitation. The Tribunal further held that since the applicant's claim made on 9.1.1979 was granted in its entirety, any additional claim would be governed by the period of limitation prescribed under Rule 11 and that in the facts of the instant case, such claim having been made beyond the period of six months from the date of payment, the claim of Rs.51,777-02 ps. was time barred.

3.4 As regards the contention that the applicant had received the amount of Rs.80,761-88 ps. paid by cheque dated 27.3.1979 under protest, the Tribunal observed that under Rule 11, as it then stood, the time bar under Rule 11 was obviated if the refund was claimed of the duty paid under protest. In the facts of the instant case, the duty was not paid under protest, but when the refund of Rs.80,761-88 ps. was received, it was stated to have been received under protest.

3.5 On these grounds, the Tribunal dismissed the appeal and also dismissed the applicant's reference application. Hence, the present application before this Court.

4. Having heard Mr Trivedi, learned counsel for the applicant, we are of the view that the order of the Tribunal does not give rise to any of the proposed questions of law which are required to be determined by

this Court. Although the questions proposed are four, they are all facets of the same question whether the applicant's claim was barred by the law of limitation stipulated in rule 11. We find that the Tribunal has given cogent reasons for holding that the departmental authorities were justified in rejecting the claim as time barred.

However, Mr Trivedi for the applicant submitted that the duty paid in November, 1978 was under Rule 173F and it is only when the assessment is made under Rule 173-I that the period of limitation would begin to run. The learned counsel also placed reliance on the Explanation to Rule 11. Rule 11(1) reads as under :-

"11. Claim for refund of duty.- (1) Any person claiming refund of any duty paid by him may make an application for refund of such duty to the Assistant Collector of Central Excise before the expiry of six months from the date of payment of duty :

Provided that the limitation of six months shall not apply where any duty has been paid under protest.

Explanation - Where any duty is paid provisionally under these rules on the basis of the value or the rate of duty, the period of six months shall be computed from the date on which the duty is adjusted after final determination of the value or the rate of duty, as the case may be."

5. It is clear that the contention now being urged on behalf of the applicant was never urged before the departmental authorities or even before the Tribunal. The question whether the applicant had paid the duty provisionally is not to be found from any of the orders of the departmental authorities or the Tribunal. So also, the date of final determination of the value or the rate of duty is also not to be found from any of the orders of the departmental authorities or the Tribunal. Hence, the questions sought to be raised on the basis of alleged facts which are not on record cannot be directed to be referred to this Court under Section 31-G(3) of the Central Excise Act.

6. Moreover, we also find an admission in para (13-a) of the memo of this application wherein it is

stated as under :-

"The applicant says that it is true that the applicant could not pass on the said benefit (i.e. the differential rate of duty between 15% and 11.25%) to the consumers because the applicant did not expect that it would cross the production target to the extent of 25 per cent."

In this view of the matter also, we are of the view that the application is not required to be entertained.

7. The application is, therefore, rejected. Rule is discharged.

(M.S. Shah, J.)

(A.M. Kapadia, J.)
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